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Supreme Court, U.S.
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MAY 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

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NO. 88-1796

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
SECOND JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

G. Joseph Weller, Deputy Defender
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COUNSEL FOR RESPONDENT

May 31, 1989

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should review the Illinois Appellate Court's proper decision to suppress evidence found in a warrantless, non-exigent search by a police officer of respondent's hotel guest room.

2. Whether, even if federal constitution questions are considered, the Illinois Appellate Court properly rejected the state's "good-faith" argument where the police secured no warrant for respondent's hotel guest room and where no exigent circumstances existed.

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NO. 88-1796

IN THE

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OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION

Opinion Below

The Opinion of the Appellate Court, Second Judicial District, is reported at 174 Ill.App.3d 563, 528 N.E.2d 1095 (2d Dist. 1988).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari (Petition at 1-2). However, as treated more fully in the argument portion of this Brief in Opposition, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Petitioner has quoted the provisions of the United States Constitution applicable to this case. (Petition at 2)

STATEMENT OF THE CASE

Petitioner's Statement of the Case adequately, presents the facts pertaining to the questions presented.

REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS APPELLATE COURT PROPERLY REQUIRED THE SUPPRESSION OF EVIDENCE FOUND IN A WARRANTLESS, NON-EXIGENT SEARCH BY A POLICE OFFICER OF RESPONDENT'S HOTEL GUEST ROOM BASED ON YOUR HONORS' DECISION IN STONER v. CALIFORNIA, 376 U.S. 483 (1964).

A particularly telling omission in the State's Petition for Certiorari is the case relied on by the Illinois Appellate Court, Stoner v. California, 376 U.S. 483 (1964). In holding that the search was improper, the reviewing court below considered Stoner as

dispositive of the issue. People v. Vought, 174 Ill.App.3d 563, 528 N.E.2d 1095, 1098-1099 (2d Dist. 1988). In Stoner, Your Honors rejected the state's contention that the search of the petitioner's hotel room without a warrant was lawful because the hotel clerk consented to the search. Relying on the analogous situation in Chapman v. United States, 365 U.S. 610 (1961) (where it was held that a landlord generally may not give consent to the search of a dwelling rented to another), this Court held that hotel room guests are entitled to the constitutional protection against unreasonable searches and seizures, stating: "That protection would disappear if it were left to depend upon the unfettered discretion of an employee of a hotel." 376 U.S. at 490.

The first ground proffered by the State as reason for granting the writ in the cause at bar is that the hotel employee had "apparent authority" to consent to the search. This "apparent authority" contention was explicitly rejected in Stoner, to wit:

> ...Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of "apparent authority."... '[I]t is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from searches and seizures subtle distinctions, developed and refined by common law in evolving the body of private property law which, more than almost any other branch of law, has been shaped by distinctions whose validity is largely historical.'.... [quoted from Jones v. United States, 362 U.S. 257, 266-267 (1960)]
>
> 376 U.S. at 488.

This eschewal of injecting property law rationale into the area of search and seizures was also a position taken by Your Honors in Chapman, 365 U.S. at 616-617. At issue are not property interests, but privacy interests. The Fourth Amendment protects people, not places. Katz v. United States, 389 U.S. 347, 351 (1967). The respondent had the right to the reasonable expectation of privacy in his hotel room.

As demonstrated above, the rule of Stoner is dispositive of the cause at bar. In advancing on its "apparent authority" contention, the petitioner relies primarily on United States v. Matlock, 415

U.S. 164 (1974).[1] A review of Matlock finds that this reliance is misplaced. The holding in Matlock provides that a valid third-party consent exists where "the consent of one who possesses common authority over premises or effects is valid against the absent, nonconsenting person with whom that authority is shared." 415 U.S. at 170. It is important to note that the third-party in Matlock was a co-habitant with the defendant.

Matlock is distinguishable. First, the cause at bar clearly falls under the ambit of Stoner since the defendant was a hotel guest. Second, a Matlock co-habitant is not involved in the matter at bar. There is no co-possessor here. Third, the respondent's reliance on footnote 7 of the Matlock opinion, 415 U.S. at 171, is unfounded since, in a hotel room situation, there is no "mutual use of the property ... for most purposes...." A hotel guest, as found by this Court in Stoner, has a reasonable expectation of privacy when no exigent circumstances exist.

One state supreme court has rejected Matlock's application in a non-"joint-user" situation, to wit:

> ... The Matlock exception is not a good faith exception to the warrant requirement; it is a consent exception resting upon the assumption that joint use or occupancy of the premises by the consenting party creates a species of assumption of risk by the defendant that the co-tenant might permit the common area to be search .... [U]pholding searches such as this based upon subjective good faith of the searching officers, might encourage police to obtain as little pre-search information as possible concerning defendant's relationship to the defendant and to their common use, access, or control of the premises to be searched.
>
> State v. Carsey, 664 P.2d 1085, 1094 (Or. 1983) (emphasis in original)

Further, it is significant that, for purposes of this petition, the petitioner has forsaken its exigent circumstances argument made below. Payton v. New York, 445 U.S. 573 (1980). See, e.g., Vought, 528 N.E.2d at 1099. Thus, there is nothing from the record to suggest that Stoner should not be applicable to the cause at bar.

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[1] Parenthetically, reliance on Matlock is made for the first time with this Court -- no mention of Matlock was made below, either in the respondent's appellate brief, petition for rehearing or in its petition for leave to appeal to the state supreme court.

Lastly, the petitioner seeks to suggest in its footnote, petition at 6, that there is a conflict among the jurisdictions on this issue. That contention is without merit. All of the cases cited in that footnote, save one, deal directly with an "apparent authority" figure, more commonly referred to as "common authority" or "joint user", in a non-hotel guest situation. None of those cases take this instant cause from the ambit of the Stoner rule.

The single hotel case cited by the petitioner, State v. No Heart, 353 N.W.2d 43 (S.D. 1984), is distinguishable. In No Heart, the hotel manager called the police to investigate a hotel room which was supposed to be vacant. The hotel manager authorized the police to check and enter the supposedly unoccupied room. 353 N.W.2d at 45. Here, the facts are markedly different -- defendant had registered for this hotel room, room 219, and had a "Do Not Disturb" sign affixed to the outside of his door. (C. 75, 83) While it is true that at the time of the search, the hotel checkout time had past, defendant's expectation of privacy was nonetheless not vitiated by this less than two hour passage of time. (C. 91, 94)

Further, the petitioner's "apparent authority" contention has been rejected in Illinois, by the Supreme Court of Illinois in People v. Miller, 40 Ill.2d 154, 238 N.E.2d 407, 409 (1968), cert. denied, 393 U.S. 961 and by the Appellate Court in People v. Bochniak, 93 Ill.App.3d 575, 417 N.E.2d 722, 724 (1st Dist. 1981).

In sum, because the Illinois Appellate Court properly found Stoner and Payton controlling, there is no compelling reason for this Court to review the cause at bar.

II.

EVEN IF FEDERAL CONSTITUTIONAL QUESTIONS ARE CONSIDERED, THE ILLINOIS APPELLATE COURT PROPERLY REJECTED THE STATE'S "GOOD-FAITH" ARGUMENT WHERE THE POLICE SECURED NO WARRANT FOR RESPONDENT'S HOTEL GUEST ROOM AND WHERE NO EXIGENT CIRCUMSTANCES EXISTED.

As a preliminary matter it should be noted that petitioner's good-faith component in this warrantless, non-exigent search is without support. United States v. Leon, 468 U.S. 897 (1984), is readily distinguishable because Leon dealt with a defective warrant; the police in Illinois v. Krull, 480 U.S. 340 (1987), relied on a constitutionally-infirm statute allowing warrantless administrative searches. Thus, in both cases, the police had "good-faith" in a judicially-issued warrant or in a legislative enactment (doing away with a warrant requirement). No such "good-faith" can be found here. Here, as reflected in the petitioner's statement of the case, Petition at 3-4, the police at bar can posit no such mitigating circumstance. The police had no "good-faith" in this warrantless search where the circumstances allowed for, and required, the judicial role. Payton v. New York, 445 U.S. 573 (1980). In addition, as noted by the appellate court below, this purported "good-faith" evinced by the police does not fall into the exclusionary exception recently enacted by the state legislature. See, Ill.Rev. Stat. 1987, Ch. 38, pars. 114-12(b)(1), (b)(2)(i), (b)(2)(ii). 528 N.E.2d at 1100. In short, the petitioner posits no theory to excuse the warrant requirement.

Moreover, the petitioner's reliance on this Court's decision in United States v. Jacobsen, 466 U.S. 109 (1984), is seriously misplaced. The petitioner suggests that there was no constitutional violation because the search of the respondent's room was a private search. The reviewing court below rejected the petitioner's contention, 528 N.E.2d at 1098-1099, distinguishing Jacobsen on the grounds that in the case at bar, unlike in Jacobsen, the contraband was seized from the defendant. In a footnote in Jacobsen, Your Honors stated that a search would be unconstitutional where the police learn from a private individual that there is contraband inside a container, seize the container from its owner, and then

conduct a warrantless search. 466 U.S. at 120 n.17. The scenario described therein is found in the cause at bar.

Further, the petitioner ignores that the police here made a warrantless entry, (C. 95, 110), to the respondent's Fourth Amendment - protected hotel room. Indeed, the appellate court also noted a quote from Professor LaFave's treatise that meets the situation at bar, to wit:

> ... it is to be doubted that if a private person searched the premises of another and then reported it to the police what he found (instead of removing the evidence and handing it over to the police), that the police could then make a warrantless entry of those premises and seize the named evidence.
>
> 1 W. L.Fave, SEARCH and SEIZURE, § 1.8(b), at 188 (1987).

In sum, for the reasons stated above, the Illinois Appellate Court correctly found Jacobsen inapposite to the cause at bar. Instead, the court below properly followed the Stoner rule rather than the Jacobsen guidelines; therefore, the State's petition on this ground is without merit.

CONCLUSION

For the aforegoing reasons, respondent prays that this Honorable Court deny the state's Petition for Writ of Certiorari.

Respectfully submitted,

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Counsel for Petitioner

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OF COUNSEL

NO. 88-1796

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Bartlett Vought, asks leave to file the attached Respondent's Brief In Opposition to the Supreme Court of the State of Illinois, without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

The Respondent was previously granted leave to proceed in Forma Pauperis in this cause in the Illinois Appellate Court.

The petitioner's affidavit in support of this motion is attached hereto.

G. Joseph Weller, Deputy Defender
OFFICE OF THE STATE APPELLATE DEFENDER
100 East Chicago Street, Suite 601
Elgin, Illinois 60120
(312) 695-8822

Counsel for Petitioner

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS

I, Bartlett Vought, being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed on my petition for writ of certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of the proceeding are true.

1. Are you presently employed?

No. I am presently incarcerated without employment.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources?

No. Only limited expense money from several friends for cigarettes, coffee, etc.

3. Do you own any cash or checking or savings account?

I Have no cash or bank accounts at this time.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

I Have absolutly no personal property or interest bearing accounts.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I only Have a son who is 21 years old and he is self-Supporting. I Have no Dependents.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury

Bartlett Vought

Bartlett Vought

SUBSCRIBED and SWORN to before me this 21 day of October, 1989.

Notary Public

NO. 88-1796

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

CERTIFICATE OF SERVICE

I, G. Joseph Weller, a member of the bar of this Court and representing Respondent in this cause, certify:

1) That I have served copies of the Motion for Leave to Proceed in Forma Pauperis, the Affidavit in support thereof, and the Respondent's Brief in Opposition on each of the counsel for petitioner, by depositing same in a United States Post Office mail box in Elgin, Illinois 60120, with first class postage prepaid, and with the envelope addressed as follows:

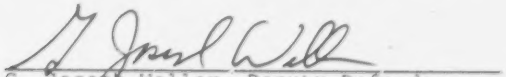
Honorable Neil F. Hartigan
Attorney General of Illinois
100 West Randolph Street - 12th Floor
Chicago, Illinois 60601

Hon. James E. Ryan, State's Attorney
DuPage County, 207 Reber Street
Wheaton, Illinois 60187

Willian L. Browers, Deputy Director
State's Attorneys Appellate Prosecutor
35 Fountain Square Plaza
Elgin, Illinois 60120

2) The above parties are the only parties required to be served.

3) An appearance form for the undersigned is attached hereto.



G. Joseph Weller, Deputy Defender
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Counsel for Respondent

DATED: May 31, 1989

NO. 88-1799

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PEOPLE OF THE STATE OF ILLINOIS, PETITIONER

- VS -

BARTLETT VOUGHT, RESPONDENT

AFFIDAVIT OF FILING BY MAIL

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

The undersigned, being first duly sworn on oath, deposes and says that he mailed the required number of copies of the Motion for Leave to Proceed In Forma Pauperis and of the Respondent's Brief In Opposition to the Supreme Court, in the above entitled cause, to the Clerk of the above Court, the Attorney General of Illinois, the State's Attorney of DuPage County, and the Deputy Director, State's Attorneys Appellate Service Commission, by depositing them in the United States Mail in Elgin, Illinois, with first class postage prepaid, and properly addressed to the Clerk of this Court on May 31, 1989, within the time for filing a Brief in Opposition to a Petition for a Writ of Certiorari.

G. Joseph Weller

G. Joseph Weller, Deputy Defender

SUBSCRIBED and SWORN to before me
this 31st day of May, 1989.

Joni S. Giertz

Notary Public

OFFICIAL SEAL
JONI S. GIERTZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10-21-91

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MARY GRUDNOWSKI
INVESTIGATOR

RECEIVED
JUN - 5 1989
OFFICE OF THE CLERK
SUPREME COURT, U.S.

May 31, 1989

Honorable Joseph Spaniol
Clerk of the United States Supreme Court
Supreme Court Building
Washington, D.C. 20543

RE: Illinois v. Vought, no. 88-1796

Dear Mr. Spaniol:

Enclosed please find the Brief In Opposition and an affidavit of mailing for the Motion to Proceed in Forma Pauperis with this Court under separate cover. Since the Brief In Opposition is filed under the in forma pauperis rules; the customary orange cover for this pleading has not been used.

If I can provide any further assistance in this matter, please do not hestitate to let me know. Thank you in advance for your attention in this matter.

Sincerely,

Manuel S. Serritos

Manuel S. Serritos
Assistant Defender

MSS/sls
Enclosure

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. 88-1796

People of the State of Illinois (Petitioner ~~or Appellant~~) vs. BARTLETT VOUGHT, (Respondent ~~or Appellee~~)

The Clerk will enter my appearance as Counsel of Record for Bartlett Vought

(Please list names of all parties represented)

who IN THIS COURT is ☐ Petitioner(s) ☒ Respondent(s) ☐ Amicus Curiae ☐ Appellant(s) ☐ Appellee(s)

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature G. Joseph Weller

(Type or print) Name G. Joseph Weller, Deputy Defender

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm OFFICE OF THE STATE APPELLATE DEFENDER

Address 100 East Chicago Street, Suite 801

City & State Elgin, Illinois Zip 60120

Phone (312) 695-8822

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE. THAT ATTORNEY WILL BE THE ONLY ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES MAY FILE AN APPEARANCE FORM.

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

CO-73A